

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 5, 2016

Agenda ID #14780

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-329:

This is the draft resolution of the Administrative Law Judge Division adopting intervenor rates for 2016. It will not appear on the Commission's agenda sooner than 30 days from the date it is served. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding.

You may serve comments on the draft resolution. Opening comments shall be served no later than May 2, 2016. Service is required on all persons on the attached service list. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Commission's Rules of Practice and Procedure.

Comments must be served separately on Administrative Law Judge Richard Smith at rs1@cpuc.ca.gov, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ KAREN V. CLOPTON

Karen V. Clopton, Chief
Administrative Law Judge

KVC: ar9

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-329
Administrative Law Judge Division
_____, 2016

R E S O L U T I O N

RESOLUTION ALJ-329 Adopting Intervenor Compensation Rates for 2016 and Addressing Related Matters.

SUMMARY

In today's resolution, we adopt a cost-of-living adjustment (COLA) of 1.28% for work to be performed in the 2016 calendar year. The approved hourly rate ranges for work performed in 2016 are shown in Table 2. This COLA was calculated using the methodology approved in Resolution (Res.) ALJ-303 and is based on the economic changes from the fourth quarter of 2014 to the fourth quarter of 2015.

The Commission intends to adopt a COLA for the 2017 calendar year, during the first quarter of 2017 using the same methodology and data reflecting economic changes from the fourth quarter of 2015 to the fourth quarter of 2016. As is currently the practice, the Commission will automatically apply the COLA to pending intervenor compensation requests claiming hours for work performed in 2016. This will ensure the fair application of the COLA to all those who make substantial contributions to Commission proceedings in 2016.

Prior to adopting the COLA for 2017, the Commission intends to further consider undertaking a study to determine the appropriateness of the Commission's established market rates for intervenor representatives. The Administrative Law Judge Division recently held an informal workshop to help determine the scope, design, specifications, and cost parameters of any study that may be undertaken, and to address other issues, as appropriate.

BACKGROUND

The Commission first established its hourly rate ranges based on compensation data provided by the major utilities.¹ Since then, the Commission has updated the hourly rate ranges approximately annually. Each update adjusted the ranges by means of a cost-of-living adjustment (COLA), adopted after public review and comment.²

Res. ALJ-281 recognized the challenges of performing a comprehensive “market rate study” for regulatory services and focused on improving the process for annual adjustments to the existing hourly rate ranges. Res. ALJ-281 directed the Chief Administrative Law Judge (CALJ) to convene a public workshop to discuss the adjustment process and, in consultation with the Commission President, to prepare a proposed resolution recommending a COLA for intervenor work performed in 2013, using factors relied on previously for this purpose or on such additional or alternative factors recommended in the public workshop.

Res. ALJ-287 approved a two percent COLA for intervenor awards of compensation for work performed in calendar year 2013. This adjustment was developed through a consensus process undertaken by the 2012 workshop participants. The Commission found this adjustment to be reasonable because it was well supported and consistent with the forecasts and indices the Commission regularly relies on for ratemaking purposes, and was recommended by parties representing diverse interests. Among the reasons cited for parties’ consensus was their desire to minimize the time and resources devoted to addressing the 2013 hourly rate adjustment in hopes of the Commission and the parties more quickly turning their attention to the task of reviewing the methodology for market rate studies and hourly rate updates. Res. ALJ-287 directed the CALJ to continue the informal process that was used to develop the COLA for 2013.

As a result of the December 2013 workshop, the Commission adopted Res. ALJ-303 establishing a consistent methodology for developing annual COLAs discussed below.

Cost-of-Living Adjustment

Res. ALJ-303 adopted the following formula for calculating the COLA:

$\frac{\frac{\% \Delta \text{CPI} - \text{U} + \% \Delta \text{CPI} - \text{W}}{2} + \frac{\% \Delta \text{ECI (Civilian)} + \% \Delta \text{ECI (Private Sector)} + \% \Delta \text{ECI (Government)}}{3}}{2} = \text{COLA}$

¹ See Resolution (Res.) ALJ-184.

² The Commission declined to approve a COLA for the years 2009, 2010, and 2011. See Res. ALJ-235, Res. ALJ-247, and Res. ALJ-267. However, COLAs were approved for 2012 (See Res. ALJ-281) and 2013 (See Res. ALJ-287).

This formula utilizes the indices of the Consumer Price Index (CPI-U), the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), and the Employment Cost Index (ECI) for civilian workers, private workers, and government workers. The indices are released on set schedule, which will allow the Commission to determine cost-of-living adjustments in a timely, predictable, and consistent manner.

The following table shows the indices used for the prior (2015) and current (2016) COLAs:

Table 1					
	CPI-U	CPI-W	ECI (Civilian)	ECI (Private)	ECI (Government)
2015	234.812 (Dec. 2014)	229.909 (Dec. 2014)	121.2 (Dec. 2014)	121.6 (Dec. 2014)	119.4 (Dec. 2014)
2016	236.525 (Dec. 2015)	230.791 (Dec. 2015)	123.7 (Dec. 2015)	124.2 (Dec. 2015)	121.6 (Dec. 2015)
% Change	0.729%	0.384%	2.021%	2.093%	1.809%

Applying the indices reflecting changes since the COLA adopted by Res. ALJ-303 results in a COLA as follows:

$\frac{0.729\% + 0.384\%}{2} + \frac{2.021\% + 2.093\% + 1.809\%}{3} = 1.28\%$
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Hourly Rates

Table 2 shows the most recently adopted ranges for hourly rates for work performed by intervenor representatives. The rates for 2016 are adopted in today's resolution.³ The adopted hourly rate ranges are rounded to the nearest five-dollar increment.

³ The rates for 2009 were adopted in Res. ALJ-235; for 2010 in Res. ALJ-247; for 2011 in Res. ALJ-267; for 2012 in Res. ALJ-281; for 2013 in Res. ALJ-287; for 2014 in Res. ALJ-303; and for 2015 in Res. ALJ-308.

Table 2						
Years of Experience	2011	2012	2013	2014	2015	2016
Attorneys						
0-2	\$150-\$205	\$155-\$210	\$160-\$215	\$165-\$220	\$165-\$220	\$165-\$225
3-4	\$200-\$235	\$205-\$240	\$210-\$245	\$215-\$250	\$215-\$250	\$220-\$255
5-7	\$280-\$300	\$285-\$305	\$290-\$310	\$300-\$320	\$300-\$320	\$305-\$325
8-12	\$300-\$355	\$305-\$360	\$310-\$365	\$320-\$375	\$320-\$375	\$325-\$380
13+	\$300-\$535	\$305-\$545	\$310-\$555	\$320-\$570	\$320-\$570	\$320-\$575
Experts						
0-6	\$125-\$185	\$130-\$190	\$135-\$195	\$140-\$200	\$140-\$200	\$140-\$205
7-12	\$155-\$270	\$160-\$275	\$165-\$280	\$170-\$285	\$170-\$285	\$170-\$290
13+	\$155-\$390	\$160-\$400	\$165-\$410	\$170-\$420	\$170-\$420	\$170-\$425

The Commission has various policies and procedures that affect hourly rates in particular circumstances.⁴ These policies and procedures address, among other things:

- Justifying rates higher than those generally adopted.
- Establishing rates for new representatives, or for representatives who have not had an authorized rate within four years prior to a pending request for compensation.
- Requesting increases greater than those generally adopted.
- Receiving step increases for 2008 and beyond.

We continue these previously adopted policies and procedures.

NEXT STEPS

The Commission has implemented several changes in response to the December 2013 workshop that are intended to make the intervenor compensation program more

⁴ See Decisions (D.) 07-01-009 and D.08-04-010.

transparent and responsive to intervenors' needs, including (1) redesigning the program website; (2) updating the Guidelines; (3) publishing on the program website a list of pending intervenor compensation claims; (4) publishing in Excel format on the program website an updated and sortable intervenor hourly rate chart/history; and (5) updating program contact information and forms.

Efforts to improve all aspects of the program are continuing. During 2015, our highest priority for the program was to substantially reduce the number of pending requests so the Commission may consistently comply with the requirement of Pub. Util. Code § 1804(e). This effort has been underway since 2013 and the Commission's dedicated intervenor compensation staff has made tremendous progress in reducing the number of pending claims and the time it takes to resolve those claims. During 2015, the Commission issued 158 compensation award decisions – more than in any previous year.

As we begin to achieve compliance with § 1804(e), we can turn our attention to other important issues, including the market rate study. As required by § 1806, the Commission's intervenor compensation awards must take into consideration the market rates paid to persons of comparable training and experience who offer similar services.

As discussed above, the Commission's last comprehensive survey of market rates for intervenors occurred in Rulemaking (R.) 04-10-010, resulting in D.05-11-031. D.05-11-031 established market rates for intervenor representatives but we have since relied on adjustments to those rates, largely due to significant ongoing data requirements and limited resources. Proposals to engage a human resources consultant were considered but not adopted, primarily due to funding constraints. However, our effort made significant progress in identifying the parameters of an appropriate market study and we now have an opportunity to build upon this effort.

On March 22, 2016, the ALJ Division held a public workshop to, among other things, review the progress made in R.04-10-010 and to further develop the scope, design, cost parameters, and specifications of an appropriate market study. Among other things, the workshop discussed whether a request for proposals (RFP) is an appropriate path forward for conducting a market rate study, and whether and how intervenors should participate in the RFP process, if undertaken. The actions planned and undertaken as a result of this workshop will be addressed in a subsequent resolution.

COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of

the Commission on the resolution. A draft of today's resolution was distributed on April 5, 2016.

FINDINGS

1. Applying the methodology adopted in Resolution ALJ-303 to current indices results in a COLA of 1.28%.
2. It is reasonable to allow individuals an annual "step increase" of five percent, twice within each experience level and capped at the maximum rate for that level, as authorized by D.07-01-009.
3. It is reasonable to allow individuals with previously approved hourly rates to request a COLA, consistent with today's resolution, for work performed in the 2016 calendar year.
4. It is reasonable to restrict intervenor rates to the adopted range of rates for any given level of experience.
5. It is reasonable to continue our policy that in no event shall any generally applicable increase in intervenor rates result in rates above the highest adopted rate for that individual's level of experience, in a given year.
6. The rate levels, procedures, and policies herein are consistent with the intervenor compensation statutes (Pub. Util. Code §§1801-1812).
7. It is reasonable for intervenor work performed in 2016, and in subsequent years, to consider hourly rate adjustments by Commission resolution.

THEREFORE, IT IS ORDERED that:

1. For work performed in 2016, intervenors are authorized an hourly rate cost-of-living adjustment of 1.28% and new hourly ranges are adopted for 2016.
2. The five percent step increase authorized in Decision (D.) 07-11-009 shall continue in 2016. The step increase shall be administered as specified in D.08-04-010.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director

INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached service list who have provided an e-mail address of the foregoing Draft Resolution ALJ-329 Adopting Cost-of-Living-Adjustment Rates for Intervenor in 2016.

I will cause a Notice of Availability of the foregoing Draft Resolution ALJ-329 to be served by U.S. mail on those on the attached service list for whom no e-mail address is provided.

Dated April 5, 2016, at San Francisco, California.

/s/ ANDREW J. RICO

Andrew J. Rico

INTERVENOR COMPENSATION SERVICE LIST
RESOLUTION ALJ-329

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